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October 28, 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: Application by Verizon for Authorization To Provide In-Region, InterLATA Services in State of Virginia, WC Docket No. 02-214

Dear Ms. Dortch:

Verizon provides this ex parte letter in response to AT&T's October 22, 2002 ex parte concerning Verizon's facilities policy and AT&T's October 23 and October 25 ex partes concerning the benchmarking of non-loop rates.

I. Verizon's Facilities Policy Does Not Unlawfully Discriminate Against CLECs and Complies with the Act.

AT&T continues to argue that, even assuming Verizon's facilities policy satisfies the Act and the Commission's rules, that policy is "unlawfully discriminatory." As Verizon has previously explained, however, AT&T's claim fails both as a legal and as a factual matter. And as described in more detail in Attachment 1 to this letter, Verizon's policy is not only consistent with existing legal requirements, but also is entirely reasonable in light of the extensive construction work needed to provide high-capacity loops in cases where no existing facilities are available.

AT&T first argues that the Commission is required to look beyond whether Verizon's policy complies with the Act and consider instead whether "it is unlawfully discriminatory for Verizon to apply one provisioning policy for retail/access customers and another for CLECs." AT&T Oct. 22, 2002 Ex Parte at 3. As an initial matter, Verizon's policy does not discriminate between wholesale and retail customers: both CLECs and retail end users may purchase special access service under the same tariffs; and if the facilities needed to provide that service are unavailable, Verizon will construct a new circuit, on the same terms for wholesale and retail customers alike. Although AT&T complains that Verizon should also be required to build new facilities for CLECs and provide them as UNEs, Verizon does not do that for its own retail customers. In the

> *Pennsylvania Order*, the Commission held that this policy is consistent with the checklist.[1] And because Verizon's policy in Virginia is the same as in Pennsylvania,[2] that same conclusion applies here.
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> AT&T nonetheless argues that the *Pennsylvania Order* "is inapposite" because it did not address whether Verizon's policy "could be applied in a discriminatory fashion." AT&T Oct. 22, 2002 Ex Parte at 3 n.9. But this argument simply misapprehends the applicable law, which makes clear that satisfaction of the checklist is tantamount to providing nondiscriminatory access to CLECs. Section 271(c)(2)(B)(ii) requires a BOC to provide "*Nondiscriminatory* access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)." Those sections, in turn, impose nondiscrimination obligations of their own. Thus, the Commission's holding in the *Pennsylvania Order* that Verizon's facilities policy satisfies the checklist, necessarily embodies a finding that this policy is nondiscriminatory.

AT&T also continues to press its claim that Verizon's high-capacity loops are essential facilities – a claim that assumes that Verizon's obligations under that antitrust doctrine exceed the requirements of the checklist. But as Verizon has previously explained, both the Commission and AT&T itself have previously acknowledged that the unbundling requirements in the Act go well beyond any requirements that conceivably could apply under the essential facilities doctrine.[3] AT&T's latest response does not dispute this, nor offer any additional legal argument for why the essential facilities doctrine is somehow applicable here.

AT&T also repeats its argument that Verizon's facilities policy effects a price-squeeze. AT&T appears to be claiming that, even though CLECs may obtain special access service from Verizon at competitive rates in any instances where there are no existing facilities to make available as UNEs, they are doomed to failure without the additional price-breaks provided by TELRIC pricing. As an initial matter, under the D.C. Circuit's and this Commission's previous orders, the price squeeze claim is one that is only relevant in instances where UNEs must be made available. In that instance, the only issue is whether the price for those UNEs can be said to effect a price squeeze that is contrary to the public interest. In contrast, in circumstances where UNEs do not have to be provided, such as where there are no existing facilities, that issue does not arise. Moreover, even if this were a different case where UNEs do have to be provided, AT&T has once again failed to support this claim with the evidence that the Commission has found is necessary to conduct this "highly complex" analysis.[4] As Verizon has previously

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1 *See Pennsylvania Order* ¶¶ 76, 91-92.

2 *See* Lacouture/Ruesterholz Decl. ¶ 127; Lacouture/Ruesterholz Reply Decl. ¶ 30.

3 *See, e.g.*, *UNE Remand Order* ¶¶ 56-61; Reply Comments of AT&T in CC Docket 96-98 at 32 (FCC filed June 10, 1999) ("the essential facilities doctrine was developed by antitrust courts to serve a fundamentally different and much narrower purpose" than the Act's unbundling regime).

4 *New Hampshire/Delaware Order* ¶ 145.

explained, the Commission has held that a party alleging a price squeeze must demonstrate that the pricing at issue "'doom[s] competitors to failure'" with extensive evidence about "costs, revenues, and necessary margins."[5] AT&T has not even attempted to provide such evidence in this proceeding, and its latest response doesn't even offer an excuse for its failure to do so. AT&T instead claims that it is "tautologically obvious that a wholesale customer is doomed to failure if it must pay Verizon a wholesale price that is no lower than what Verizon charges retail customers," because "even the most efficient CLEC must incur some retail costs." AT&T Oct. 22, 2002 Ex Parte at 5. But this claim fails for at least two reasons.

First, many wholesale customers – including AT&T itself – typically pay *lower* rates than retail customers because they qualify for volume and term discounts. AT&T concedes that it avails itself of these discounts, but complains that it must commit to long-term contracts in order to receive them. But the very fact that AT&T and other competitors can and do obtain these discounts is proof that they are not doomed to failure in the relevant market.

Second, as the Commission has recognized, the difference between the wholesale and retail price for a given input is not the only relevant inquiry in a price-squeeze analysis. It also is necessary to consider *all* of the various revenues that a customer can earn from the use of a wholesale input. In the context of the UNE Platform, for example, the Commission has held that it is necessary to analyze the revenues that a carrier could earn not only from local services, but also from intraLATA and interLATA toll, access, and "from services other than traditional voice services" such as DSL.[6] With respect to special access, competitors typically use this as an input to provide many various adjacent services, including long distance voice and a wide array of packet-switched data services such as ATM and Frame Relay. AT&T's failure to provide information regarding the revenues and margins it earns from the provision of these and other services that it provides using special access is fatal to its claim. And the fact that AT&T and the other major interexchange carriers already dominate the national market for these services proves that they are able to compete using combinations of their own facilities and special access from ILECs and alternative providers.

AT&T's claims also are unsupported by the facts. Contrary to AT&T's claims, the market for special access is highly competitive, as are the adjacent markets for various long distance voice and data services in which special access is used as an input. There is accordingly no basis on which to conclude that Verizon's conduct is discriminatory, that it constitutes the denial of an essential facility, or that it results in a price squeeze. The facts instead show that, even without access to high-capacity loops in the limited circumstances at issue here,[7] AT&T and other competitors have been able to thrive using special access service from Verizon.

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5 *Vermont Order* ¶ 66 (quoting *Sprint v. FCC*, 274 F.3d at 554); *New Hampshire/Delaware Order* ¶ 145.

6 *New Hampshire/Delaware Order* ¶ 156.

7 Although AT&T claims that Verizon's no-facilities policy results in the rejection of up to 39 percent of CLEC orders for high-capacity loops in Virginia, the actual number is

AT&T itself is one of the largest suppliers of special access in the country. According to one public source, AT&T earned nearly *$3 billion* in special access revenues in 2001.[8] Relying on that same source, ALTS – a CLEC trade association – reports that CLECs as a whole earned approximately *$10 billion* in special access and private line revenues in 2001.[9] Although AT&T quibbles with the share of the overall market these revenues represent (and with the totals themselves), competitors have undeniably made such substantial gains in this market that it is absurd to claim that Verizon's facilities are somehow essential and are being unlawfully withheld, or even that competitors are being harmed in some material way.

AT&T claims (at 4 & n.13) that the Commission's data show that the ILECs' share of the special access services market is 88.5 percent, but that is simply not true. AT&T counts the revenues that CLECs and ILECs reported to the FCC for the provision of special access and local private line service in 2000. But, as AT&T's own expert has previously conceded, those figures fail to account for the significant amounts of special access revenues that AT&T and other interexchange carriers earn by providing long distance service bundled with special access service over their own access facilities (*i.e.*, "self-supply").[10] AT&T's expert has previously admitted that, once those revenues are taken into account, the CLECs' share of the special access market is at least twice the amount that AT&T claims here.[11] Moreover, even the approach taken by AT&T's expert significantly understates CLEC revenues because, among other things, it fails to account for the fact that long distance carriers other than AT&T and Worldcom also self-supply access.[12] The revenue figures on which AT&T relies also are from 2000, even though CLEC special access revenues have grown considerably since that time.[13]

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much lower. Between January and June 2002, Verizon rejected 17 percent of CLEC high-capacity loop orders in Virginia due to no facilities.

8 *See* New Paradigm Resources Group, *CLEC Report 2002*, AT&T Profile at 10 (15th ed. 2002).

9 *See* ALTS, *The State of Local Competition 2002, Annual Report*, at 18 (Apr. 2002).

10 *See* Declaration of Michael Pfau on Behalf of AT&T Corp. ¶ 16, CC Docket No. 96-98 (FCC filed Apr. 30, 2001) (acknowledging that the access that AT&T and WorldCom supplied to themselves in 1999 was worth approximately $900 million, and was not accounted for in the FCC's revenue report).

11 *See id.* (stating that CLECs account for "about a 22% share" of the market for special access services).

12 *See UNE Fact Report 2002* at L-2.

13 *See id.*; *see also* ALTS, *Progress Report on the CLEC Industry* at i (Oct. 17, 2002) ("CLEC revenues and market share continue to grow").

Moreover, while AT&T notes (at 4) that some of the special access revenue that AT&T and other CLECs earn is from reselling ILEC service, that merely confirms that special access provides a viable alternative to high-capacity loops. In any event, a great deal of the special access service that CLECs provide is provided over competitive facilities. AT&T's own president has recently boasted that AT&T has invested *$20 billion* thus far to build its own local "access layer," and that AT&T satisfies a significant fraction of its access needs using its own facilities.[14] AT&T has "built 18,000 route miles of fiber in 90 cities and we have about 7,000 buildings on net and that's growing every day."[15] AT&T provides more than 30 million voice-grade equivalent lines using these facilities – most of which, as AT&T concedes here, are used for private line and special access services.[16] CLECs also can and do obtain high-capacity transport from many other competitive suppliers.[17] Indeed, as early as 1997, one Wall Street analyst was reporting that AT&T was already "giv[ing] more than half of all of its local dedicated access orders to the CLECs, as opposed to the ILECs."[18]

AT&T also is a major – and, in many cases the largest – provider in many of the markets in which ILEC special access is typically used as an input. For example, AT&T is the largest supplier of long distance voice service to business customers, the largest supplier of ATM and

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14 *See* David Dorman, President, AT&T, *Presentation at the Goldman Sachs Communacopia Conference*, Transcript of Remarks (Oct. 2, 2002) ("The access layer, AT&T has invested over $20 billion on the business side by the purchase of teleport and additional capital we've put in it. . . . And we are up to over 20 percent now of our T1-equivalent services are on net and we're growing that every day with a real focus at a grassroots, granular level, building by building, address by address, of moving customers over.").

15 *Id.*

16 AT&T claims (at 4) that these 30 million lines are "beside the point" because they are "additional services" used "principally [for] private line data services" that "do not connect to the local switched network." AT&T is obviously confused. These lines may be "additional" to the *switched* access lines that AT&T reports to the FCC (the issue in the Triennial Review proceeding from which AT&T has haphazardly cut and paste its response here), but they are nonetheless dedicated local lines that AT&T admittedly uses to provide special access and private line services and that are obviously relevant to any competitive analysis for such services.

17 *See*, *e.g.*, WorldCom, *Hi-Cap Competition* at 6 (Oct. 7, 2002) (WorldCom "contracts with 41 CLECs" for fiber), *attached to* Ex Parte Letter from Ruth Milkman, Counsel for WorldCom, to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (Oct. 7, 2002).

18 F.J. Governali, et al., Credit Suisse First Boston Corporation, Investext Rpt. No. 2563177, Teleport Communications Group, Inc. – Company Report at *6 (July 7, 1997).

Frame Relay services, and one of the largest suppliers of Internet access to business customers.[19] AT&T's success in these markets obviously reflects the fact that AT&T either has extensive special access facilities of its own, or has been able to obtain these facilities from other sources – including ILECs – without difficulty. Whatever the case may be, AT&T's claim that Verizon's facilities policy is somehow discriminatory is without merit and must be rejected.

II. AT&T's Suggestion that Verizon's Facilities Policy Is a Basis for Rejecting the Virginia UNE Loop Rates as Non-TELRIC-Compliant Is Entirely Misguided.

AT&T's second attempt to demonstrate that Verizon's facilities policy requires rejection of the Virginia UNE loop rates fares no better than its first iteration of the same arguments. As Verizon has previously explained and does so again below, AT&T's suggestion that the Virginia loop rates are based on assumptions inconsistent with Verizon's facilities policy is wrong. But the most critical point is that AT&T's arguments are irrelevant. The fact is that the Virginia loop rates benchmark to the existing New York UNE rates, and the Commission accordingly has the information it needs to find that the rates are within the range that TELRIC permits. *See Delaware/New Hampshire Order* ¶ 44 & n.154 (loop rates that benchmark to current New York rates are within reasonable TELRIC range).

AT&T's effort to demonstrate that the Virginia loop rates do not benchmark to the New York loop rates is beset with confusion and entirely incorrect. AT&T's benchmarking argument is premised on the claim that the New York PSC and the Commission were not aware of Verizon's facilities policy when they approved the *old* New York loop rates and that those rates were allegedly based on assumptions contrary to Verizon's policy. *See, e.g.*, *AT&T Oct. 22 Ex Parte* at 7 (referring to the rates set by the New York PSC and upheld by the FCC in the New York 271 case). Leaving aside the fact that AT&T's claim is incorrect, AT&T seems to have missed the point that the relevant benchmark here is the *current* New York rates, *not* those the FCC reviewed in the New York 271 proceeding. And AT&T itself concedes that Verizon's facilities policy was publicly known by at least July 2001, six months *prior* to the time the New York commission set the current rates. *Id.* at 6. Thus, AT&T is simply wrong that the "value" of a New York loop and a Virginia loop cannot be properly compared because the latter supposedly is "diminished" by Verizon's facilities policy. *Id.* (referring to New York loop as "fully loaded" automobile and Virginia loop as "a stripped down entry-level" one). Verizon's the policy applies equally to loops in both states. Indeed, as AT&T essentially acknowledges, the loop rates in New York were set in the wake of Verizon's public, industrywide reiteration of the facilities policy, and AT&T and the New York Commission accordingly were aware of Verizon's policy before the current New York loop rates were set. *Id.*

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[19] *See*, *e.g.*, IDC, U.S. Frame Relay Services: Market Forecast and Analysis, 2000-2005, at 12-13 (2001) (AT&T is national leader in frame relay, with 35 percent of total frame-relay revenue); IDC, ATM Services Market Share and Assessment, 2000-2005, at Figure 6 (2001) (AT&T is national leader in ATM, with 23 percent of total frame-relay revenue); AT&T Corp. Form 10-K (SEC filed Apr. 1, 2002) ("AT&T Business Services is one of the nation's largest business services communications providers").

In any case, even AT&T's suggestion that the *prior* New York loop rates "were set and upheld on assumptions that can no longer apply to Verizon loops in Virginia," *AT&T Oct. 22 Ex Parte* at 7, is simply incorrect. AT&T asserts that the prior New York loop rates included "the implicit right to buy additional loops at the same unit price." *Id.* at 6; *see also id.* at 7 (prior New York loop rate reflected "an implicit option to buy additional loops on the same terms and conditions"). But as Verizon has previously explained, to the extent AT&T is suggesting that it should be able to lease all loops of a particular type in a state at the same price, it of course has that right in both New York and Virginia. To the extent it is claiming that the prior New York loop rates included the right to purchase on demand an additional loop in whatever location AT&T desired, that is simply not the case. The Commission has consistently made clear since the *Local Competition Order* that a CLEC's right to obtain UNEs is limited only to existing facilities and does not require ILECs to construct new facilities in places they do not exist. *See, e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 ¶ 324 (1999) ("[T]he Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use"). And AT&T does not provide a single cite to the record before the New York commission or this Commission's 271 proceeding that suggests the loop rates at that time were based on a different understanding.

Even if AT&T's argument were not irrelevant given that the Virginia loop rates benchmark to those in New York, it still would be wrong. Indeed, Verizon has already refuted the purported rationales that AT&T reiterates in its October 22 filing. *See Verizon Oct. 16 Ex Parte*. AT&T once again argues, for example, that in light of Verizon's facilities policy, "[c]harging CLECs for . . . spare capacity is a basic TELRIC violation." *AT&T Oct. 22 Ex Parte* at 8. But this argument again turns on AT&T's erroneous assumption that the spare capacity accounted for in the Virginia UNE rates is designed primarily for new growth facilities. As Verizon has explained, a large amount of outside plant spare capacity is needed, not for growth, but to ensure proper operation and support of loops that are in service, including those provided to CLECs. *Verizon Oct. 16 Ex Parte* at 8. Indeed, the language AT&T quotes ostensibly to prove that spare is designed to account for future facilities instead demonstrates that Verizon's fill factors recover the cost of the spare needed for "providing quality service in Virginia." *AT&T Oct. 22 Ex Parte* at 10, quoting Virginia SCC Case No. PUC970005, Bell Atlantic Br. at 106 (Sept. 7, 1997). Or as Verizon explained in the FCC arbitration, the spare included in UNE rates is "need[ed] to allow [the network] to function properly . . . to serve *current* operational needs." VZ-VA Br., *supra*, at 108.

Tellingly, in order to make its point, AT&T resorts to misquoting and grossly distorting language from Verizon's brief in the pending Virginia arbitration: while AT&T uses that brief to try to show that Verizon's fill factors are designed to account for new facilities needed to accommodate growth, the language AT&T misquotes actually reads: "The primary factor in distribution utilization *is not growth,* but the need to accommodate subscribers' needs for multiple lines in a timely manner." Virginia FCC Arbitration, VZ-VA Br. at 110 (emphasized language omitted by AT&T, *Ex Parte* at 11). As Verizon has explained, to the extent such spare results in there being an idle available facility in the place where a CLEC requests it, Verizon certainly will make that facility available.

AT&T contends that Verizon cannot legitimately claim that its fill factors do not necessarily mean a spare facility will be available at any given moment in the precise location requested by the CLEC, because, AT&T alleges, such "hit-or-miss availability of spare loops . . . is a far cry from the large amounts of spare capacity . . . on which Verizon's loop cost studies and rates were based." *AT&T Oct. 22 Ex Parte* at 9. But Verizon has always explained that its fills are *average* fills across the network, which by definition means that the amount of available spare will differ in different locations and at different times across the network. *See, e.g.*, VZ-VA Br., *supra*, at 108. In any event, AT&T's invocation of the "large amounts of spare capacity" on which the Virginia rates are based is particularly ironic given the significant increases the SCC made to Verizon's fill factors when setting the Virginia rates. And these same adjustments are responsible for the considerable reduction in the amount of "M" costs that Verizon recovers through the Virginia rates, resulting in an underrecovery that overwhelmingly dwarfs any conceivable percentage of "M" costs that *is* recovered in the rates and that might in some way relate to an activity that Verizon does not perform pursuant to its facilities policy.

Thus, ultimately AT&T's argument that Verizon's facilities policy is inconsistent with the Virginia loop rates is both irrelevant and wrong. It is irrelevant because the Virginia loop rates benchmark to those in New York, and, under clear Commission and D.C. Circuit precedent, that is sufficient to demonstrate the Virginia rates fall within a reasonable TELRIC range. And, in any event, AT&T's argument is incorrect because the Virginia loop rates do not require CLECs to somehow pay for capacity from which they do not benefit.

III. The Virginia Switching Rates Are Within a Reasonable TELRIC Range.

AT&T's October 23 ex parte arguing that the Virginia switching rates are not TELRIC-compliant merely repeats its tired and rejected arguments. As an initial matter, although the Virginia SCC determined that the switching rates were TELRIC-compliant, to address any concerns about the vintage of those rates, Verizon has agreed to true up those rates, retroactive to August 1, 2002, to the rates that are adopted by the Commission in the Virginia arbitration proceeding. In any case, the current rates themselves benchmark to the rates in New York. As the D.C. Circuit recently confirmed yet again, the Commission's use of benchmarking to determine that rates are within a reasonable TELRIC range is appropriate and consistent with the Act. *See WorldCom Inc. v. FCC*, 2002 WL 31360443, **2-4 (D.C. Cir. Oct. 22, 2002) ("[T]he Commission may base its finding of TELRIC compliance on a comparison of the disputed rates with those of a neighboring state which it had already approved under § 271, provided that the applicant can demonstrate that local costs were at or above those in the benchmark state.").

Of course, the Commission also has reaffirmed its previous conclusion that aggregate benchmarking of non-loop rates is entirely appropriate. *Delaware/New Hampshire Order* ¶¶ 47-54. As Verizon has explained in detail, the Commission's well-established practice of benchmarking non-loop rates in the aggregate is entirely consistent with the Act and its underlying policies, and AT&T's attack on the ability of the Synthesis Model's to estimate relative costs is well beyond the scope of a 90-day section 271 proceeding. *See Verizon Oct. 16*

Ex Parte. Moreover, as Verizon has also shown, using certain basic assumptions, Verizon's current Virginia switching rates (*separate* from transport) compare favorably to the corresponding 271-approved switching rates in Texas, Oklahoma and Louisiana, which provides still further confirmation of the reasonableness of the aggregate benchmarking approach. *See Verizon Oct. 22 Ex Parte*.

AT&T's October 23 filing claiming that the Commission should reject Verizon's Virginia application because its switching rates alone do not benchmark to the New York rates does not come close to offering a reason for the Commission to reverse course. Indeed, AT&T's filing barely mentions the *Delaware/New Hampshire Order*, where the Commission dealt comprehensively with this issue and rejected the same arguments AT&T makes here. AT&T's attempt to resuscitate its argument that the Commission is legally required to benchmark each rate separately is unavailing. Indeed, that is confirmed by AT&T's attempt to use precedents concerning state *rate-setting* under section 251 as purported authority for its claim that the Commission must individually benchmark each rate under section 271. *AT&T Oct. 23 Ex Parte* at 7. To be sure, as AT&T notes, the Supreme Court did observe that "TELRIC prices *are calculated* on the basis of individual elements." *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646, 1678 (2002) (emphasis added). And, as Verizon argued in appealing the Delaware state commission's decision setting UNE rates, a state commission is obligated to set individual rates that are cost-based, and any party can seek review of whether a given rate is TELRIC-compliant under section 252(e)(6). But, as Verizon has explained and the Commission has found, the Commission's role under section 271 is *not* to set rates, but rather to make a generalized determination of compliance with TELRIC principles. *See Verizon Oct. 16 Ex Parte* at 4-7; *Delaware/New Hampshire Order* ¶¶ 50-52; *see also WorldCom Inc.*, 2002 WL 31360443, at *2 ("[B]ecause the FCC has only 90 days to approve or reject a § 271 application, it cannot independently determine the TELRIC compliance of an ILEC's UNE rates."). For that purpose, benchmarking non-loop rates in the aggregate is, as the Commission has repeatedly concluded, entirely appropriate.

Finally, AT&T's October 25 ex parte concerning Verizon's comparison of the Virginia switching rates to the Texas, Oklahoma, and Louisiana rates misses the point. First, AT&T alleges that the comparison is an "admission" that a switching-only comparison is the proper means of performing a benchmark analysis. *AT&T Oct. 25 Ex Parte* at 1. But this is clearly untrue. As Verizon reiterated in its October 22 ex parte (at 1), "the Commission should continue its well-established practice of applying its benchmarking analysis to non-loop elements in the aggregate to determine whether rates in an applicant state generally fall within the broad range that a reasonable application of TELRIC principles could produce." Nonetheless, given AT&T's repeated focus on a switching-only rate comparison, Verizon provided the comparison as additional confirmation of the reasonableness of benchmarking to the non-loop elements in New York in the aggregate.

For this reason, AT&T's arguments that Verizon's comparison fails because it is not a proper benchmarking analysis under Commission precedent is both irrelevant and unavailing. *AT&T Oct. 25 Ex Parte* at 3-4. Leaving aside the accuracy of AT&T's contentions regarding whether it *would* have been appropriate for Verizon to have performed a benchmark comparison to the Texas, Okalahoma and Louisiana rates in this proceeding, the point is, as noted above, that the analysis Verizon provided was intended merely to be a source of additional comfort regarding the reasonableness of benchmarking to the New York non-loop rates in the aggregate. Moreover, as Verizon explained in its October 22, 2002 ex parte, the fact that the Virginia switching rates compare favorably to the switching rates in SBC's and BellSouth's states is further evidence that benchmarking the non-loop rates in the aggregate to New York non-loop rates is the appropriate approach.

Nor is there anything to AT&T's cursory allegation that the rate structures among the states in Verizon's comparisons are so dissimilar as to undermine the value of Verizon's comparison. For example, AT&T notes that Texas and Oklahoma have separate signaling charges while Virginia does not. But in fact, the Virginia usage rate *includes* signaling costs, so the fact that the separate signaling charges in Texas and Oklahoma were omitted from Verizon's comparison actually means that the Virginia rates compare even more favorably to the rates in those states than Verizon's analysis shows. Similarly, while AT&T notes that the rates in Texas and Oklahoma vary by density zone, Verizon's analysis accounts for that difference by using a statewide average.

Please let me know if you have any questions.

Sincerely,

Ann D Berkowitz

Attachment

cc: U. Onyeije
B. Olson
G. Remondino
V Schlesinger
T. Preiss
R. Lerner
R. Kwiakowski